

1 something else in mind?

2 A Well, basically yes. I mean, that was -- there  
3 wasn't any other vendor checks or checks being disbursed on  
4 behalf of Hicks Broadcasting that would really come from any  
5 other -- I mean, any other source, any other reason that we  
6 could see at that time.

7 Q Along those lines, I want to direct your attention  
8 to Mass Media Bureau Exhibit 1, page 14, which I think is  
9 the start of the Joint Sales Agreement.

10 THE COURT: What number is that?

11 MR. SHOOK: Mass Media Bureau Exhibit 1.

12 THE COURT: One.

13 MR. SHOOK: Page 14.

14 THE COURT: Page 14. Okay.

15 BY MR. SHOOK:

16 Q Now, if I understand the situation correctly, the  
17 Joint Sales Agreement was going to be assumed by Hicks  
18 Broadcasting of Indiana, LLC in terms of Booth's obligations  
19 and rights?

20 A That's correct.

21 Q Now, I want to direct your attention to our  
22 exhibit, page 18, which happens to be page 6 of the  
23 agreement. And the particular section that I want you to  
24 focus on is Section 4.4(a), in particular, the last two  
25 sentences.

1           A     Yes.

2           Q     Now, are you aware of any months during the  
3     operation of the Joint Sales Agreement that the expenses of  
4     Hicks Broadcasting of Indiana, LLC has exceeded the revenues  
5     of that entity by more than \$5,000?

6           A     Well, to answer your question, that is yes. My  
7     question I guess back to you would be that this is a  
8     Booth/Pathfinder document. And when we adopted it, we had  
9     some amendments or changes to the -- to this agreement.  
10    Now, whether they were just name changes or whatever, I  
11    don't know. But I am aware of that.

12          Q     Well, just so we're on the same page here, if you  
13    will, it's my understanding that there was an amendment to  
14    the Joint Sales Agreement, but that that did not take place  
15    until January of 1997.

16          A     Correct.

17          Q     Now, were there -- are there other amendments that  
18    you're thinking of?

19          A     No, no. I just wanted to make sure we were  
20    talking about a Hicks/Pathfinder agreement for Booth and  
21    whether they had some changes.

22          Q     Well, is it your understanding that as of April 1,  
23    1994, that Hicks had stepped into Booth's shoes with --

24          A     That's correct --

25          Q     -- respect to the Joint Sales Agreement?

1           A     That's correct.

2           Q     Now, focusing on the last sentence of Section  
3     4.4(a), I just want to make sure I heard you, I mean, if you  
4     answered this, whether or not you were aware of months where  
5     the expenses of Hicks Broadcasting of Indiana, LLC exceeded  
6     its revenues by more than \$5,000?

7           A     I believe there were some time periods, yes.

8           Q     Now, do you know whether or not this provision in  
9     the agreement was followed in the sense that if such were  
10    the case, if expenses exceeded the revenues that the first  
11    \$5,000 was offset and that Hicks reimbursed Pathfinder for  
12    the amount over \$5,000?

13          A     I don't believe in those cases it was.

14          Q     Do you know why not?

15          A     I believe that in a meeting of the minds --  
16    conference with Watson and myself where we were looking at  
17    more of a 12 month picture of this operation than month to  
18    month. And we realized that there would be flow back and  
19    forth. That is how I recall a discussion went regarding  
20    that. So, we did overlook that on a month to month basis at  
21    that time -- at that time period.

22          Q     Was there supposed to come a time when an  
23    adjustment would, in fact, occur that one side would  
24    reimburse the other?

25          A     I don't know that we even got that far to say what

1 would happen. It fortunately worked out where it did flow  
2 back. So, there wasn't really -- from either side and  
3 especially Pathfinder's side to me. I was never put up for  
4 any demands to make that whole.

5 Q Let me make sure I understand what you're saying  
6 there. Are you saying that when Pathfinder owed Hicks  
7 money, you didn't make any demand upon Pathfinder?

8 A That's correct.

9 Q Would it also be the case the other way around  
10 that when Hicks owed Pathfinder money that Pathfinder did  
11 not make any demand on Hicks?

12 A That's correct. We have never done that because  
13 we are -- we were watching this thing grow and we were  
14 seeing it go back and forth. There was a period of time  
15 that it did exceed probably -- looking back on it now when I  
16 would say what I would say questionable grounds where you  
17 might question it, but then it did flow back again. So, it  
18 all kind of worked out. So, you're absolutely right. We  
19 did not adhere to the language of that definition.

20 Q I want to direct your attention to Mass Media  
21 Exhibit 3, page 14. Now, I know there's been some direct  
22 testimony about this. This is a copy of the application  
23 that was filed to acquire WRBR by Hicks Broadcasting of  
24 Indiana, LLC?

25 A Correct.

1           Q     Now, I want to direct your attention to page 19,  
2     in particular question 15 of the application.

3           A     Page 20?

4           Q     Excuse me, page 20. Now, we're pretty clear that  
5     at this time there was no written agreement of any sort  
6     regarding future ownership. Correct?

7           A     That's correct.

8           Q     Is it also your testimony that there was no  
9     understanding of any kind regarding future ownership?

10          A     In my mind there was no understanding of any kind.  
11     That's correct.

12          Q     Now, did you ever relate to the board members of  
13     Crystal Radio that your negative response to Question 15 was  
14     justified by the absence of any documents regarding an  
15     understanding or agreement regarding future ownership?

16          A     No, I never related to the board in that regard,  
17     no.

18          Q     Did you relate to any individual member of that  
19     board?

20          A     No.

21          Q     What is your response to the charge that the  
22     option was not disclosed in order to foreclose inquiry into  
23     Mr. Dille's possible involvement with the station?

24          A     I guess you'd have to repeat that. And what is  
25     the response?

1           Q     Was the option not disclosed in order to foreclose  
2     inquiry into Mr. Dille's possible involvement with the  
3     station?

4           MR. HALL:  Objection.

5           THE COURT:  Sustained.  It's not his position.

6           THE WITNESS:  I really --

7           MR. HALL:  You don't have to answer.

8           THE COURT:  Did he make such a statement or  
9     representation at some point?

10          MR. SHOOK:  No, I'm not saying Mr. Hicks did.

11          THE COURT:  Well, you're asking what is his  
12     response.  Response from whom?  Someone made such a  
13     representation?

14          MR. SHOOK:  That's what I recall from earlier  
15     testimony.

16          THE COURT:  Who?

17          MR. SHOOK:  Mr. Sackley.

18          THE COURT:  Well, you can read him Sackley's  
19     testimony.  Ask him if he agrees or not.

20          MR. SHOOK:  Your Honor, I don't have any such  
21     testimony in front of me.

22          THE COURT:  Well, he gave an affidavit, didn't he?  
23     Use that if that's where he said it.

24          MR. SHOOK:  Your Honor, I withdraw that question.

25

1 BY MR. SHOOK:

2 Q I want to focus your attention, Mr. Hicks, on the  
3 next page I believe it is, page 21 of Mass Media Exhibit 3.

4 A Yes.

5 Q With respect to the assignees financial  
6 qualifications?

7 A Yes.

8 Q Now, if I recall your direct testimony correctly,  
9 the certification was based on personal -- your personal  
10 assets. Was that correct?

11 A In answering that question?

12 Q Yes, sir.

13 A Yes. That's correct.

14 Q Now, if you could briefly describe for us what  
15 personal assets you intended to rely on?

16 A Savings and stocks.

17 Q In a rough amount of?

18 A Two hundred -- two hundred fifty thousand.

19 Q And such assets were -- you intended to rely on  
20 them in the event station revenues were insufficient to  
21 cover expenses?

22 A Well, that would be the source if I needed to --  
23 if I ran into a problem in three months, that would have  
24 been the source, certainly, if I had to do it from a  
25 personal standpoint.

1           Q     Now, where in fact did money come from during the  
2 first three months when the station's expenses exceeded its  
3 revenues?

4           A     In the operation of the Joint Sales Agreement, it  
5 was in that back and forth type receivables.

6           Q     Well, as far as that goes, I want to direct your  
7 attention to the financial statements that -- it's Volume 4.  
8 It's Exhibit 112. What I'd like you to focus your attention  
9 on initially, Mr. Hicks, are the first three months which  
10 would be April, May and June.

11          A     Yes.

12          Q     I take it first of all, you received each of these  
13 documents?

14          A     I do.

15          Q     And you received them approximately on or about  
16 the date that appears on the first page of each. For  
17 example, the April document the date April 30, 1994 appears.  
18 You would have received this document shortly after April  
19 30?

20          A     Well, it might be a 15-day period into the next  
21 month or so.

22          Q     Fair enough. Now, in looking at the second page  
23 of the exhibit, now if I'm reading this correctly, the back  
24 and forth between Pathfinder and Truth is that as of April  
25 30, Hicks is owed money by Pathfinder and Truth.



1 Did you understand that to be the case?

2 MR. HALL: Direct the witness to --

3 MR. SHOOK: Under the Liabilities and Equity  
4 section, there are two references. One, accounts payable  
5 Truth, one, accounts payable Pathfinder.

6 MR. WERNER: Mr. Shook, you're at page Bates No.  
7 Pathfinder 180?

8 MR. SHOOK: Correct.

9 MR. WERNER: In the right-hand column, Liabilities  
10 and Equity.

11 THE COURT: What's your question?

12 BY MR. SHOOK:

13 Q Did you have an understanding at that time that  
14 Pathfinder and Truth owed Hicks money?

15 A Well, I don't know that I looked at it that way.  
16 I looked at it over the total picture of an operation  
17 period. But this is what it says. This is -- you're  
18 pointing this out to me at this time, yes. But I don't -- I  
19 didn't analyze this at that time and say that this is money  
20 owed.

21 Q Maybe I should ask you then, how did you analyze  
22 this document?

23 A Well, the very first thing I really look at is to  
24 see how the month did, see how the expenses corresponded  
25 with the revenue that came in. The others kind of

1 rolling -- a rolling period of time when we were getting the  
2 venture off the ground and going to analyze it a certain  
3 period of time. That's how I really look at the financial  
4 statement.

5 Q Right. So, if you could direct me then to a  
6 couple of entries in terms of what it was you were focusing  
7 on.

8 A Uh-huh. Well, the fact in this particular month,  
9 I guess of April, we were doing about \$48,000 in local  
10 business, about \$5,000 in national business. We had some  
11 political business, and we had total revenue at that time of  
12 \$56,000 of that month. And our total expenses at that time  
13 were \$39,000. That's the type of thing I would look at  
14 first.

15 Q I see. So, you would also look at then the  
16 revenue net of commissions because there were commissions  
17 that had to be paid on --

18 A Right --

19 Q -- the revenue.

20 A Right.

21 Q So, you were focusing on essentially the  
22 difference, if you will, between the revenue net of  
23 commission and the total expenses?

24 A That's right. And we came out at that particular  
25 \$3,500 ahead then when we started. So, I would -- those

1 are, as you asked, the type of things I look that. That's  
2 probably the first thing I look at.

3 Q But I take it that you also understood the revenue  
4 was -- it's revenue billed. Correct? It's not revenue  
5 collected?

6 A That's correct.

7 Q And with respect to the expenses, I take it some  
8 of those expenses are also accrued and not yet paid?

9 A There could be some that are.

10 Q Now, focusing on the month of May then, which  
11 would I guess the page that we'd be looking at is page 6 of  
12 the exhibit.

13 A Correct.

14 Q So again, if we would look at the figure revenue  
15 net of commission, that's one of the things that you would  
16 focus on?

17 A Right.

18 Q And then the total expenses you would also focus  
19 on?

20 A Right. Yes.

21 Q So, if I'm looking at those two accurately in the  
22 month of April, there was a figure of \$3,318 on the positive  
23 side, but for the month of May it was \$7,769 on the negative  
24 side?

25 MR. HALL: Are you talking about the month of May

1 or year to date, Mr. Shook?

2 MR. SHOOK: Year to date. Excuse me.

3 THE WITNESS: Year to date was seven seven, yes.

4 BY MR. SHOOK:

5 Q All right. And then moving on to the month of  
6 June.

7 A Yes.

8 Q Looking again at revenue net of commission the  
9 year to date is up to \$134,505, but the total expenses are  
10 now at \$161,067?

11 A Correct.

12 Q And so, that leaves an operating cash flow a  
13 deficit of \$26,562?

14 A That's correct.

15 Q Did you have an understanding as to where the  
16 money was coming from in order to fund such a deficit?

17 A Well, you want to understand this was a -- this  
18 was a Joint Sales Agreement so there's another -- there's  
19 another side to this. It's contributing revenue into this  
20 entity.

21 Q Let's make sure we understand each other in terms  
22 of what this -- the financial statements are supposed to  
23 represent. I understood and correct me if I'm wrong, that  
24 the financial statement was supposed to take into account  
25 the financial situation of WRBR including whatever revenues

1 and expenses were due or owed under the Joint Sales  
2 Agreement.

3 A Uh-huh.

4 Q Is that an accurate understanding?

5 A I believe you're right.

6 Q Now, if we move on to the month of July of 1994  
7 focusing on page 12 of the exhibit, which is unfortunately  
8 not very clear. Another way of recognizing what page I'm on  
9 would be the Bates-stamped number that appears in the upper  
10 right-hand portion. Well, actually if you see the numbers  
11 Path 00190, you're on the same page I am.

12 A Yes. On the side? Yes.

13 Q Right. Now, as of the end of July, you'd be  
14 looking at the revenue net of commission year to date, we're  
15 up to \$160,000?

16 A Correct.

17 Q And the total expenses are \$190,000?

18 A Correct.

19 Q So, we have an operating cash flow deficit at this  
20 point of more than \$30,000?

21 A On year to date.

22 Q Right, year to date. And what understanding did  
23 you have as to where the money was coming from in order to  
24 fund that?

25 A Well, here again, we're looking at more than just

1     you know, three months. We're going to look at a 12-month  
2     period.

3           Q     Would it be appropriate then under -- now, that  
4     was a consequence of a discussion that you had with Mr.  
5     Watson I believe you testified to. Right?

6           A     I believe it was, yes.

7           Q     And that conversation with him took place I take  
8     it before or just about the same time that Hicks  
9     Broadcasting of Indiana, LLC became the licensee of WRBR?

10          A     Right.

11          Q     Was there supposed to be -- in terms of the end  
12     period for review, was the review period then supposed to  
13     take place?

14          A     I don't know that we had a date that we said we're  
15     going to sit down and review this. I don't recall that at  
16     all.

17          Q     Did you review with Mr. Watson the performance as  
18     of the end of 1994?

19          A     I'm certain it was discussed, sure.

20          Q     Well, along those lines, I want to direct your  
21     attention to pages 25, 26 and 27. Those are the last three  
22     pages of the exhibit.

23          A     Uh-huh.

24          Q     Do you see the figure under the column "Year to  
25     Date Actual" revenue net of commission?

1 A Now, where are you? What page?

2 Q I'm on page 27 of the exhibit.

3 A Twenty-seven. Okay.

4 Q There's a "Year to Date Actual" column.

5 A Well, I'm sorry. I'm in '95.

6 Q Okay. What I'm looking at is the last page of  
7 Mass Media Exhibit 112.

8 MR. HALL: That's Path 205, Mr. Shook?

9 MR. SHOOK: Yes, it is.

10 THE WITNESS: All right. Okay. I'm with you now.

11 BY MR. SHOOK:

12 Q And do you see the figure under "Year to Date  
13 Actual" for revenue net of commission?

14 A Yes.

15 Q \$352,859?

16 A Right.

17 Q Do you see the figure for total expenses?

18 A Yes.

19 Q \$405,429.

20 A That's correct.

21 Q So, we have an operating cash flow deficit at this  
22 point of \$52,570?

23 A Right.

24 Q Now, did you and Mr. Watson ever discuss whether  
25 or not Hicks Broadcasting of Indiana, LLC was going to make

1     that up to whoever it was that was funding --

2             A     I don't recall --

3             Q     -- their operation --

4             A     -- we ever had a discussion about that, no.

5             Q     I want to direct your attention to Mass Media  
6     Exhibit 1.

7             THE COURT:   Are we moving on to another subject?

8             MR. SHOOK:   Yes, sir.

9             THE COURT:   Well, we'll be in recess until --  
10     before we do that, is there going to be a speaker phone  
11     use --

12            MR. WERNER:   Yes, Your Honor --

13            THE COURT:   Are we going to wait for this witness  
14     to finish his testifying or what?

15            MR. WERNER:   I had spoken to Mass Media Bureau  
16     counsel before the hearing and discussed with them this  
17     issue.  At the present time, I have made arrangements with  
18     the one character witness who will be available to testify  
19     today to be on standby.  It's my intention to try to  
20     communicate with him during the lunch break to give him some  
21     idea of when they can expect to appear.  If not, we can -- I  
22     advised him that it could be as late as the late afternoon.  
23     I can discuss with Mr. Shook off the record --

24            THE COURT:   Well, I just wanted to find out.

25     We're not going to interrupt this witness?  There will be a



1 speaker phone here after lunch available.

2 MR. WERNER: I have spoken to your staff about  
3 having the equipment brought in, in the event that we were  
4 able to get the witness. The only circumstances in which we  
5 would have to interrupt the witness is if it looked as  
6 though we were not going to complete Mr. Hicks today. But  
7 it's been our expectation, at least, that that was not going  
8 to be a problem.

9 THE COURT: How much more does the Bureau have?

10 MR. SHOOK: We're a little more than halfway  
11 finished. So, it's my expectation that we would complete  
12 this before the close of business today.

13 THE COURT: All right. All right. We'll be in  
14 lunch recess till 1:30.

15 (Whereupon, the hearing recessed, to reconvene  
16 that same day, Friday, November 6, 1998, at 1:30 p.m.)

17 //

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20 //

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1                   A F T E R N O O N       S E S S I O N

1:30 p.m.

3 THE COURT: Mr. Shook?

4 Whereupon,

5 DAVID HICKS

6     having been previously duly sworn, was recalled as a witness  
7     herein and was examined and testified as follows:

8 FURTHER CROSS-EXAMINATION

9 BY MR. SHOOK:

10 Q Mr. Hicks, I'd like to direct your attention to  
11 Mass Media Bureau Exhibit 1, page 40.

12           A     The volume -- I guess I --

13 Q It's in the first volume --

14           A     I don't have that.

15 Q You may not have it. This is my opportunity to  
16 make Doug get up.

17 MR. HALL: The February 22, 1994?

18 MR. SHOOK: Yes.

19 THE COURT: What volume did you say?

20 MR. SHOOK: Volume 1, Exhibit 1, page 40.

21 THE WITNESS: I have that.

22 BY MR. SHOOK:

23 Q Now, if I remember correctly on direct testimony,  
24 you said that you had seen this statement at about the time  
25 that it was executed

1 A I believe that's true, yes.

2 Q And that famous word "reviewed" it?

3 A In that context, yes.

4 Q And then you sent it on to Mr. Campbell?

5 A I did.

6 Q Did you happen to speak with Mr. Campbell as to  
7 why the FCC wanted the statement from Mr. Dille?

8 A I don't believe I did, no.

9 Q Did you speak with Mr. Dille about why the FCC  
10 wanted the statement?

11 A No, I did not.

12 Q Did you speak with Mr. Watson about why the FCC  
13 wanted the statement?

14 A No, I did not.

15 Q Now, I want to focus your attention on the payment  
16 that was made by Hicks Broadcasting of Indiana, LLC to Booth  
17 American on or about April 1, 1995. That's the \$105,000  
18 payment.

19 Now, the money was paid by Hicks Broadcasting of  
20 Indiana, LLC to Booth. Correct?

21 A Correct.

22 Q Do you know what the source of the money was for  
23 Hicks Broadcasting?

24 A Without looking at some documents, I would say it  
25 was loans -- number of loans.

1           Q     Now, I want to direct your attention to the  
2 deposition that you gave December 28, 1995.

3           THE COURT:   What page?

4           MR. SHOOK:   It's in Exhibit 3.  And it's on page  
5 151 of the exhibit.  And the portion of the deposition I  
6 want to direct your attention to is the questions that begin  
7 on what is marked page 269, line 23.  And I'll have some  
8 questions that follow that.

9           Q     Then continuing with the Schedule 2.1(a) of  
10 Exhibit 15, it provides that there was to be a payment of  
11 \$105,000 on the first anniversary of the closing date.  Am I  
12 correct that that would have been due then in March of 1995?

13          A     That's correct.

14          Q     Was that \$105,000 paid?

15          A     That's correct.

16          Q     Who came up with the money for the \$105,000?

17          A     The company.

18          Q     WRBR -- I mean, Hicks Broadcasting of  
19 Indiana, LLC?

20          A     That's correct.

21          Q     Was this income that the company had  
22 generated through operation?

23          A     That's correct.

24          Q     Did you have to contribute anything to the  
25 \$105,000?

1           A     I did not.

2           Now, my question to you is why did you testify  
3 during the deposition that the \$105,000 payment had been  
4 derived from income that the company had generated through  
5 the operation?

6           THE WITNESS: Jim, I really -- I really have no  
7 explanation for this. This whole deposition is a very  
8 confusing time. Like I said, I was caught off guard. I had  
9 no chance to even think that I would be asked questions  
10 regarding this, and I had no chance to do any research. And  
11 these were -- these were answers to questions that were very  
12 confusing to me at the time.

13          BY MR. SHOOK:

14          Q     Now, that being said, though, at that point in  
15 time in late March, early April of 1995 when that payment  
16 was due and then made, that was certainly the most sizeable  
17 payment that the company had to make up to that point. Was  
18 it not?

19          A     Yes, it was.

20          Q     And it was made what? If my timing is right,  
21 about nine months before your deposition?

22          A     That's correct.

23          Q     Is it that you simply didn't remember where the  
24 money had come from?

25          A     It was a case of having to respond, not knowing

1     how to respond to a question of that sort in a confusion  
2     state, I believe, over this whole thing. And I -- that's  
3     all I can really say about this whole deposition and my  
4     recollection. It was totally out of character for me to  
5     have this even happening. So, I had never been exposed to  
6     anything like this.

7           Q     As of December of 1995, had it been your practice  
8     to review the monthly financial statements that were  
9     generated with respect to WRBR?

10          A     I -- yes, I would look over the statements, sure.

11          Q     As a general matter, would you discuss them with  
12     anyone or not?

13          A     If it needed to be -- if there were some items on  
14     there that I, you know, thought needed to be discussed, I  
15     usually discussed those with Steve Klein, yes.

16          Q     Along those lines, I want to direct your attention  
17     to Mass Media Exhibit 110, which appears in the fourth  
18     volume of exhibits. Just to make sure we're looking at the  
19     same document, what I'm looking at is a July 23, 1995 letter  
20     from yourself to Mr. Steve Klein?

21          A     That's correct.

22          Q     And this would be the type of communication that  
23     you would have with Mr. Klein concerning your analysis of  
24     the financial reports that you received regarding WRBR?

25          A     I'm not sure that every time I had this type of

1 communication. A lot of times it was strictly pick up the  
2 telephone and ask questions. I don't know why a telephone  
3 call can replace this, but maybe at this particular time I  
4 just wanted to put it down on paper.

5 Q Now, with respect to the Associated Press item,  
6 what is your concern there?

7 A There's a lot of different ways now to pay for  
8 news wire. There's barter ways. There's -- they've got  
9 different types of services so you don't have to take the  
10 entire service that Associated Press or any of those  
11 services give you. You can take bits and pieces. I think  
12 this might have reflect -- reflected to are we nearing the  
13 end of this contract, so we can discuss a possible  
14 renegotiation or maybe cherry picking some of the items that  
15 we want or don't want from Associated Press.

16 I think that's what that was referring to.

17 Q Well now, in terms of the Associated Press, the  
18 date of the letter is July of 1995. And so, Hicks  
19 Broadcasting of Indiana, LLC has been the licensee for what?  
20 Fourteen, fifteen months now?

21 A Correct.

22 Q Was the Associated Press item something that  
23 carried over from Booth and that you had to pick up?

24 A That was something I inherited I believe as a  
25 contract, that I inherited from the Booth operation.

1           Q     So, that wasn't an item that you had contracted  
2     for yourself?

3           A     No, sir.

4           Q     Moving to the second item, you have a question  
5     about the rent. Is that what I'm seeing?

6           A     It appears that, yes.

7           Q     What is it about the rental figure that puzzled  
8     you?

9           A     It looked to me like maybe the months -- comparing  
10    month to month it was -- there was an increase it said here.  
11    I used the word "sizeable." I'm not sure what I really  
12    meant because without comparing it, but there was some  
13    increase. I was just asking a question and what was in the  
14    rent and whether there was maybe anything else in there that  
15    wasn't what I was thinking of as rent.

16          Q     Now, I want to make sure we're looking at a proper  
17    figure. I suppose one could look at that one of two ways.  
18    It's either \$30,000 -- \$30,420 or perhaps there's an extra  
19    zero at the end of this.

20          A     It looks like it might be a typo. I think we're  
21    looking at \$3,042. Without -- again, without having  
22    something to verify that, I think that is what I'm looking  
23    at.

24          Q     Well, if I understand this letter, you were  
25    looking at the June 1995 financial statement. Why don't we



1 take a look at that right now?

2 A Okay.

3 Q It's at Mass Media Exhibit 113. And it begins on  
4 page 16.

5 A Yes.

6 Q Now, under the -- on the second page, if you go to  
7 page 17 under the category of Management Expenses?

8 A Correct.

9 Q It's the sixth item. It appears to be Rent  
10 Expense.

11 A Correct.

12 Q And so, you were looking under the heading or the  
13 column of "This Month Actual?"

14 A "This Month Actual," \$3,042 that was, yes.

15 Q All right. And if we go to the month of May of  
16 that year, specifically page 15 of Mass Media Exhibit 113.  
17 Now, the corresponding entry I see there for rent expense is  
18 \$2,916.

19 Do you see that?

20 A I see that.

21 Q And if we go back to the month of April, in this  
22 case it would be page 12 of Mass Media Exhibit 113 --

23 A Yes.

24 Q If I'm reading this statement correctly, the  
25 rental figure for the month of April was \$3,115. Do you see

1     that? Did you end up speaking with Mr. Klein as to -- in  
2     order to get an answer to your question, how was this number  
3     arrived at? The number being, the rental figure that's  
4     referenced in Mass Media Exhibit 110?

5           A     Well, I don't recall what the answer was from  
6     1995, but I can what my question reflected was that the rent  
7     was not consistent. And I was questioning I think why --  
8     and if we were going to discuss this, why it wasn't  
9     consistent. And there may have been some other things in  
10    there that I wasn't aware of at that particular time.

11          Q     Do you recall whether you received an answer from  
12    Mr. Klein?

13          A     Again, I can't remember what his answer was, but  
14    Steve's very good at following up and informing me of those  
15    things.

16          Q     What is your present understanding in terms of  
17    WRBR's rent?

18               MR. HALL: Objection, vague. His present  
19    understanding of what it was then or what it is now?

20               MR. SHOOK: No, what it is now.

21               MR. SHOOK: Well, we've had some rent increases.  
22    I'm not sure I know the exact number right off the top of my  
23    head, but I think it's running more of a consistent pattern  
24    then it did at this point.

25

1 BY MR. SHOOK:

2 Q Now, focusing on today, do you know how the rental  
3 figure is arrived at?

4 A This has been something that Steve and I have --  
5 have discussed. And I'm even getting down to let's talk  
6 about square footage here, about exactly what we have  
7 compared to what Pathfinder has in the same location. And  
8 it's very difficult process because there are so many of  
9 these rooms that we share, like production studios, where  
10 the copy room is. We're sharing -- I mean, things of that  
11 sort.

12 So, it's really how nitpicky you want to get on  
13 square footage. But I guess it's been kind of a 50/50  
14 sharing up until this point. And I guess I'm questioning,  
15 are we on the short side of this, or are we doing all right?  
16 And again, it's really kind of hard to pare down.

17 The facilities that we have are not adequate  
18 facilities for two radio stations. And it's becoming a real  
19 problem because we even have people sharing desk space when  
20 the other ones are out. And it's just -- you know, it's a  
21 concern to me that we've got to do something about our  
22 space. We're just outgrowing it, and it's a real problem.

23 So, I am really kind of looking into that at this  
24 point, and I guess I even did back in this -- was  
25 questioning it back then.

1           Q     Your present understanding is that the rental  
2     arrangement at the location of both Stations WRBR and WBYT  
3     is a 50/50?

4           A     That's my understanding, yes.

5           Q     And do you know whether that's been the case, or  
6     do you know how long that has been the case?

7           A     Well, I -- I would like to believe it's been the  
8     case all the way along, but I have been questioning this,  
9     yes.

10          Q     I take it there's no written understanding between  
11     Hicks and Pathfinder in terms of rental?

12          A     No, there hasn't been, and that's somewhat of my  
13     concern.

14          Q     I want to focus on the people who've been involved  
15     at programming for WRBR. I think it's pretty clearly  
16     understood by everybody that the program director for WRBR  
17     at this point is Joseph Goldbach. Correct?

18          A     I'd even forgotten his name, yes. It's Joe  
19     Turner. Yeah, that's correct.

20          Q     Would it more helpful if I used Joe Turner?

21          A     That would be helpful.

22          Q     All right. Was there somebody who preceded Mr.  
23     Turner as program director at WRBR?

24          A     Yes.

25          Q     And who was that?

1           A     That was Phil Britain.

2           Q     Do you know how long he was program director at  
3     WRBR?

4           A     I really don't know how long he held that title.  
5     I never really viewed Phil as my contact for programming  
6     while had that title.

7           Q     Who would have been your contact for programming  
8     while Mr. Britain held the title of program director at  
9     WRBR?

10          A     I worked with a person by the name of Bob Henning.

11          Q     Was that from April of 1994 until when?

12          A     Well really, I considered Henning as my contact  
13     person up until Joe Turner really came in and took the  
14     reigns of the programming. I was concerned that -- I didn't  
15     want this to be a dual role because again I'm thinking about  
16     we've got to continue to grown, and this programming thing  
17     is a very important aspect of that growth. And we had to  
18     have true leaders in each area there. So, I designated in  
19     my own mind as far as my contact and the person that was  
20     actually doing the programming at that time was Bob Henning.

21          Q     I want to direct your attention to Mass Media  
22     Exhibit 72. It's in Volume 3. The particular page that I'd  
23     like you to look at is page 10. And what I'm looking at  
24     bears a date of November 29, 1994?

25          A     Correct.

1 Q Did a copy of this document come to you from  
2 Steve?

3 A I don't recall ever seeing this document, no.

4 Q Do you recall Steve informing you that Phil  
5 Britain was going to assume the dual position of program  
6 director for WBYT and WRBR?

7 A Yes, I do.

8 Q Did you have any comment on that?

9 A Yes, I did.

10 Q What was it?

11 A That I would hope it would be a very temporary  
12 period of time.

13 THE COURT: Why did you feel that way?

14 THE WITNESS: As I stated, Your Honor, I really  
15 felt that if we were going to continue to grow, we needed  
16 some direction, some definite attention to my radio station  
17 from a programming element and not this dual role, which he  
18 really had no interest in that to begin with. He was a disc  
19 jockey on a country music station and also filling in as a  
20 program director.

21 So, from a time element and an interest element,  
22 he really didn't have it for my radio station.

23 THE COURT: You wanted a separate program  
24 director?

25 THE WITNESS: Yes, I did.

1 THE COURT: And when did you get a separate  
2 program director?

3 THE WITNESS: Well, it took a little longer I  
4 think than I really wanted. But that's when Joe Turner then  
5 was moved in that position. And he kind of came in through  
6 an assistant manager or assistant program director and then  
7 elevated finally to the full program director.

8 THE COURT: Well, if you were the owner and you  
9 wanted a program director, why didn't you tell Klein to get  
10 you a program director?

11 THE WITNESS: Well, I did, but I also was working  
12 within what I thought was his timeframe of a short period of  
13 time to cover some things that he needed -- he thought he  
14 needed to cover. And again, he's the manager, and I value  
15 his direction for awhile. And that's why I worked with Bob  
16 Henning and not Phil Britain, because Bob Henning was  
17 actually the music -- the knowledgeable music guy in regard  
18 to oldies radio at that time.

19 So, I just bypassed Phil Britain.

20 BY MR. SHOOK:

21 Q Now, with respect to Bob Henning, if you'd take a  
22 look at paragraph number 2 on Mass Media Exhibit 72, page  
23 10, it makes a reference to Mr. Henning. Do you see that?

24 A Yes.

25 Q Do you know whether in fact the plan that is